Supreme Court, U.S.
FILED

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No.

In the Supreme Court of the United States
October Term, 1998

VERONICA L. DAVIS

Petitioner

vs.

SYNTEX LABORATORIES, INC.
ROCHE BIOMEDICAL LABORATORIES, INC.

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI AND SUMMARY REVERSAL

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56 pp

QUESTIONS PRESENTED FOR REVIEW

As a result of the United States District Court proceeding, the trial court dismissed Petitioner's cause for failure to obtain an expert report, within the time frame designated by the trial court, pursuant to the trial court's pretrial order,. The court allowed the Defendants to designate the type of expert to be obtained. At the time of entry of the pretrial order, Petitioner had not obtained or designated any experts, other than her treating physicians. Petitioner advised the trial court of an inability and the impediments in obtaining this information within the time frame set by the trial court. The Court further prohibited Petitioner from obtaining discovery and disclosure of Defendant's records, drug interaction reports, and other relevant material until the production of an expert report.

The questions presented are:

1. Whether the trial court denied the appellant due process by issuing an order mandating that appellant obtain an expert in contravention of the Federal Rules of Civil Procedure 16, 26(a), and 26(b, which imposes no requirement to engage in discovery or to obtain an expert.
2. Whether the court's order denying appellant to seek discovery or disclosure from Defendants as allowed by the Federal Rules of Civil Procedure 26,29, 33,34, 36 resulted in a denial of due process to appellant and the equal protection of laws, as well as the denial of the ability to redress grievances to the

court in violation of the First and Fourteenth Amendments to the united States Constitution.

3. Whether the trial court may dismiss a cause for failure to obey a pretrial order when a party has shown an inability to comply.

4. Whether the trial court has the grant of authority to dismiss a cause of action as a sanction, when dismissal results in a denial of due process.

5. Whether being subjected to a judge who exhibits bias and lack of impartiality constitutes a denial of due process?

6. Whether the taxation of costs against the Petitioner was an abuse of discretion by the trial court or violative of 28 U.S.C. § 1920.

PARTIES TO THE PROCEEDING

The Petitioner in this case is Veronica L. Davis, proceeding pro se. The Petitioner is also an attorney, licensed to practice in the state of Texas. Petitioner's address is 222 N. Mattson, West Columbia, Texas 77486.

The Respondents are Syntex Laboratories, Inc. and Roche Biomedical Sciences, Inc. The caption, however, reads, Roche Biomedical Laboratories, Inc., due to the ruling with the United States District Clerk and the Fifth Circuit Court of Appeals, that the caption must match the docket sheet.

Attorneys for Respondents and the trial court level and appellate court level were Richard L. Josephson and Mark Walters, of Baker and Botts. LLP, 910 Louisiana, Houston, Texas 77002.

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)N FOR A WRIT OF CERTIORARI
ND SUMMARY REVERSAL

L. Davis, respectfully petitions for a writ of he judgment of the United States Court of Appeals it in this case, and for summary reversal of that

OPINIONS BELOW

on of the Court of Appeals denying rehearing inafter referred to as App., is not reported. The ɔurt of Appeals on the merits (App. 2) is not :ision of the United States District Court for the Texas, Houston Division (App. 3) is not reported.

JURISDICTION

ction of this Court is invoked under 28 U.S.C. ıion of the United States Court of Appeals was 1998. On August 10, 1998, the Court of Appeals : denied the Petition for Rehearing by the panel.

:ITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment to the **United States Constitution**

ngress shall make no law pecting an establishment of igion, or prohibiting the free ercise thereof; or abridging the edom of speech, or of the press; the right of the people to

> peaceably assemble, and to petition the Government for a redress of grievances.

The **Seventh Amendment** to the **United States Constitution** provides that:

> In a suit at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved,....

The **Fourteenth Amendment** to the **United States Constitution** provides as follows:

> SECTION 1.All persons born or naturalized in the United States and subject to the jurisdiction thereof, are Citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. §1920 provides as follows:

A judge or clerk of any court of the Unites States may tax as costs the following:

(1) Fees for the clerk and marshal;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Docket fees under section 1923 of this title

(5) Compensation of court appointed experts.....

28 U.S.C. § 2072, known as the *Rules Enabling Act* provides in pertinent part:

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district court..... and courts of appeals.

(b) Such rules shall not abridge, enlarge, or modify any substantive right. All laws in conflict with such rules shall be of no further force and effect after such rules have taken effect.

STATEMENT OF THE CASE

Petitioner is an individual who filed a products liability cause of action in the United States District Court of the Southern District of Texas, Houston Division, on the basis of diversity of citizenship. Petitioner filed the product liability suit complaining of injuries sustained as a result of taking a drug manufactured, designed, distributed, and marketed by the Respondents for the use of

endometriosis in women. In addition to proportionally minor complaints attributed to the drug, such as excessive weight gain, fatigue, severe headaches, depression and sleeplessness, Petitioner sought relief for the major complaints of pituitary gland enlargement, pituitary adenopathy, cardiovascular disorders, and cerebral hemorrhage associated with the drug.

Petitioner sought disclosure and discovery from Respondents relevant to the information produced by them to the Food and Drug Administration regarding side effects of the drug, drug interactions studies, complaints regarding the drugs, as well as all empirical data and studies performed in connection with the drug. Based upon information obtained from medical journals and the Food and Drug Administration, Petitioner had sufficient information to substantiate her claims that the drug, Synarel (Nafarelin acetate) caused or contributed to the medical problems of which she complained.

The Court ordered Petitioner to produce an expert report, explaining the causal connection between the drug and her condition. (App. 4), within a limited time frame and early in the litigation. The trial court later modified its order mandating that Petitioner produce an expert report from an endocrinologist connecting Petitioner's problem to an "unreasonable and unanticipated harm to her pituitary." (App.5)

Upon Petitioner's inability to comply with said order, the trial court dismissed Petitioner's cause, with prejudice. (App. 3). The trial court rejected all documentation, data, and journal articles evidencing the causal connection between the drug and Petitioner's injuries.

The trial court further rejected Petitioner's earlier Motions for Reconsideration/Motion to Vacate the Court's Order (Doc#. 14,23, 27), Motion to Compel Motion for Sanctions (Doc# 13 and its Motion for Recusal (Doc# 29).

On appeal, Petitioner set forth 6 bases for appeal, which are encapsulated into the following:

1. Whether the trial court abused its discretion in dismissing Appellant's case with prejudice by requiring Appellant to submit an expert report, prior to designation of an expert by Appellant early in the discovery phase of the case and by failing and refusing to allow Appellant a continuance to obtain said report, upon a showing of good cause.
2. Whether the trial court abused its discretion in failing and refusing to allow disclosures and discovery from Appellees by the Appellant.

The court denied Appellant's appeal on the bases that courts are vested with inherent powers to manage and control its docket efficiently and that it is within the authority of the court to grant dismissal upon the disobedience of those orders.

Upon rehearing, Appellant raised the following issues for rehearing:

1. The Appellate court erred in finding that the District court could dismiss the case with prejudice as sanctions for failure of a party to obey court orders.

2. The court erred with respect to finding that Appellant failed to comply with court orders, thereby warranting dismissal.

3. The Court of Appeals failed to make a ruling regarding the Appellant's assertion that the trial court abused its discretion in taxing costs of discovery against Appellant. (See Petitioner/Appellant's Motion for Rehearing).

Appellant's Motion for Rehearing was denied.

REASONS FOR GRANTING THE WRIT

The reasons for granting the writ, which are more fully expounded below, is that the trial court and the Fifth Circuit Court of Appeals have decided federal questions of substance in a manner inconsistent with applicable decisions of this Court. Moreover, there appears to be a conflict between the circuits regarding the bounds or limitations of the court in exercising management and control of its docket, and in what constitutes discovery abuse which would warrant sanctions. The dramatic departures from this court's pronouncements and that of other circuit district courts(6th, 7th, 9th) provides a compelling basis for this court to review the decision of the Court of Appeals for the Fifth Circuit. Additionally, the trial court has so far departed from the accepted and usual course of judicial proceedings and the appellate court has sanctioned this departure, such that the exercise of this Court's supervisory power is necessary. Finally, separate and apart from the federal questions raised by this litigation, this court's decision has widespread impetus, in that it affects any and

all persons who have taken the drug, Nafarelin acetate who have no knowledge of its latent or patent effects.

I. THE FIFTH CIRCUIT COURT OF APPEALS RULING FUNDAMENTALLY MISINTERPRETS THE TRIAL COURT'S GRANT OF AUTHORITY TO MANAGE AND CONTROL ITS DOCKET IN THAT ITS DECISION CONFLICTS WITH THE FEDERAL RULES OF CIVIL PROCEDURE, 28 U.S.C. § 2072, THE SEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE SEVENTH CIRCUIT.

The trial court exceeded it's grant of authority to manage and control its docket by mandating that Petitioner obtain an expert report and her medical records in order thereby resulting in dismissal without proper development of Petitioner's case.

As heretofore stated, early in the development of the case (three weeks after the Rule 16-**Federal Rule of Civil Procedure** , hereinafter referred to as **F.R.C.P.** 16, the trial court ordered the Petitioner to produce an expert report from an expert, which had not yet been obtained. [Emphasis added]. The trial court designated this expert to be an endocrinologist who would show the causal connection between the Petitioner's medical condition and the drug, which is the object of this suit. Petitioner's treating physicians (neurologists) were prohibited by the court from providing an expert report in this regard. Petitioner was unable to acquire such an expert, with knowledge of the drug's effects on the pituitary in the short period of time set by the court, although approximately 28 persons were contacted (See Doc.#

8,12-Appendix 4 & 5).

Petitioner asserts that the court was without authority under **F.R.C.P.** 16 and 26 to make such an order and to dismiss Petitioner's cause. Moreover, the Petitioner was wholly prohibited from obtaining discovery from Respondents which would have provided answers to the questions raised by the court regarding the causal connection between the drug, Synarel, which was the object of the suit, and Petitioner's injuries.

Any inherent authority granted pursuant to the **Federal Rules of Civil Procedure** do not extend to mandating that a Petitioner conduct certain discovery. The court's action violated the due process rights of Petitioner, denied her equal protection under the laws, and denied her access to the courts to redress her grievances as guaranteed by the United States Constitution.

The trial court dismissed Petitioner's cause of action "on Syntex's motion." (Doc. # 28). Respondent's Motion to Dismiss seeks dismissal pursuant to **F.R.C.P.** 37(b)(2), on the basis that Petitioner failed to comply with the court's order for the production of an expert report and the production of medical records. Because the medical records had been obtained by appropriate discovery methods by Respondent at the time of the issuance of the court's order of Dismissal on December 05, 1997,(Doc # 37, Appendix 3) as evidenced by its taxation of costs (Doc# 38), it appears clear that the basis for the dismissal was the failure to produce the expert report.

The trial court and Respondents attempt to paint a picture of contumacious conduct on the part of the Petitioner, in order to justify its order of dismissal, specifically stating that Appellant failed to obey

the foregoing court order, in spite of the evidence which Petitioner proffered to show an inability to comply. (See June Simon Transcript-pages 16-18, line 3). In light of the contentions raised by the Respondents, the Court of Appeals for the Fifth Circuit failed to address the flagrant disregard of the rules pertaining to discovery by the trial court and pretrial conferences pursuant to the **Federal Rules of Civil Procedure**, and focused on the court's inherent power to manage its docket. (See Appendix 2).

Because the power of the court in managing and controlling its docket is not an unbridled grant of authority, which allows the disregarding of the due process rights guaranteed under the **United States Constitution,** this Honorable Court must grant certiorari to review the decisions of the lower courts and grant summary reversal, as set forth below.

Petitioner, in keeping with the Supreme Court's ruling in **Link v. Wabash R.R.**, 370 U.S. 626, 629-630, 82 S.Ct. 1386,1388 (1962), acknowledges that the court has a substantial inherent power to control and manage its docket. However, that power must be exercised in a manner consistent with the Federal Rules of Civil Procedure. "Those rules are the product of a careful process of study and reflection designed to take "due cognizance both of the need for expedition of cases and protection of individual rights." See **Strandell v. Jackson County, Ill.** 838 F.2d 884 (C.A. 7 1988) citing **S.Rep. No.** 1744, 85th Cong., 2d Sess., reprinted in 1958 **U.S. Code Cong. & Admin. News**, 3023, 3026.

28 U.S.C. § 2072, known as the *Rules Enabling Act* provides in pertinent part:

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district court..... and courts of appeals.

(b) Such rules shall not abridge, enlarge, or modify any substantive right. All laws in conflict with such rules shall be of no further force and effect after such rules have taken effect.

In the instant case, these rules have been annihilated by the trial and appellate courts to the degree that the Petitioner's rights have not only been abridged, but has been subverted as well.

The **Seventh Amendment of the United States Constitution** provides that a citizen of the United States shall be afforded a trial by jury. More specifically, said Amendment provides in pertinent part:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

Therefore, the inherent authority granted the court, does imbue the trial judge to become the fact-finder, as that authority lies within the hands of the jury.

Neither, **F.R.C.P.** 16, nor **Rule** 26 allow the court, through its inherent power to mandate that a party obtain an expert. The rules do not mandate that the party must rely on an expert to prove up its case. Moreover, the foregoing rules do not mandate that a party engage in discovery. The rules simply allow the court to initiate a plan to control, schedule and complete discovery.

In **Identiseal Corp. Of Wisconsin v. Positive Identification Systems, Inc.**,560 F.2d 298(7thCir.. 1977) the trial court dismissed plaintiff's cause of action because it determined "that the pretrial work necessary to efficiently try this action had not been done" and ordered that the case be dismissed for want of prosecution, upon the failure of the attorney to prepare a final pretrial report, as ordered.

The attorney "made a considered judgment that discovery would in no way be beneficial to the plaintiff's interest and would at most be of some significant support or assistance to defendant." He determined that his client's chances would be maximized if he did not conduct discovery, but developed his entire case at trial.

The Court of Appeals made this finding:

> Discovery in lawsuits in the federal courts is governed by Rule 26 to 37 of the **Federal Rules of Civil Procedure**. Although these rules provide for judicial intervention to settle disputes about the scope of discovery and to enforce a legitimate request by one party for information or documents from another party, ***they do not give district judges the authority to compel a litigant to engage in discovery in the first place***. Id at 301. [Emphasis added]

The Court in **Identiseal** recognized the right of the district court to "advance the cause and simplify the procedure before the cause is presented to the jury" citing **O'Malley v. Chrysler Corp.**, 160 F.2d 35,36 (7th Cir. 1947), however, the court recognized that this

right was not unlimited.

Likewise, the trial court in **Fidelity and Deposit Co., Inc. v. Joseph Oat Corp.**, 859 F.2d 501.5093 (7th Cir. 1988) citing **Identiseal** stated that the district court has no authority to make a party take discovery.

In the case at bar, it was clear from data held by Respondents that Petitioner could fully develop her case through questioning Respondents experts and those parties who had performed empirical studies and developed data for and on behalf of Respondent, as provided by **F.R.C.P.** 26(a)(1)(B); (a)(2)(A); and (b)(4)(A),(B). The district court, through its mandate deprived Petitioner of that right.

Even the 1993 Amendments to the **Federal Rules of Civil Procedure** which allows the trial court to issue orders limiting the time for discovery and the control and scheduling of discovery (See **F.R.C.P.** 16(b)(3);(c)(6), the amendments do not give the trial court the power to order a litigant to make discovery. **F.R.C.P.** 26 specifically provides what disclosures shall be made, however, it does not compel a party to obtain an expert.

Identiseal is directly on point with the case at bar. Moreover, in the case at bar, it is clear that **F.R.C.P.** 26(a)(2)(B) clearly provides that a party is to disclose an expert which has been ***retained or employed*** to provide expert testimony.[Emphasis added]. The rule fails to provide that a party may be compelled to obtain such an expert, in the event that one has not been obtained. **F.R.C.P.** 37(c) clearly provides that the sanction for failing to designate a witness is the exclusion of said witnesses testimony at trial, not the dismissal of

a party's cause of action.

The 7th Circuit further recognized the limitations on the trial court as it relates to pretrial conferences. It recognized that under Rule 16, the district court does not have the power to dismiss a case based upon a party's refusal to follow the judge's wishes expressed at the pretrial conference, unless the failure to follow his wishes could be characterized as a "failure to prosecute." Id at 302, citing **J.F.Edwards Construction Co. v. Andersen Safeway Guard Rail Corp.,** 542 F.2d 1318 (7th Cir. 1976).

The Court further determined that its decision was not predicated solely on "the absence of express authority in Rule 16 authorizing compulsory discovery", but also that "the parties, rather than the court, should determine litigation strategy."

Likewise, the Court's mandate, that Petitioner obtain its own medical records and submit them to Respondents, in spite of the agreement of the parties (App.6) and in contravention of **Federal Rules of Civil Procedure** 16, 26, 29,31, and 34 evidence another instance, in which the trial court exceeded the grant of authority afforded it pursuant to those rules and interfered with the litigation strategy of the parties. Specifically, the Respondents could obtain any information it needed from the obtaining of Petitioner's medical records through a records service pursuant to **Federal Rules of Civil Procedure** 31, as per agreement of the parties (Appendix 7) and as Respondents had been doing, as evidenced by Doc # 38, rather than the court ordering the Petitioner to traverse the State of Texas to obtain records to submit to Respondent in a legally admissible form. Moreover, it appears clear that the court's order required duplicity of

effort, funds, and were in contravention of the **Federal Rules of Civil Procedure** 29 and/or 31, in obtaining that information.

The Fifth Circuit's failure to appropriately apply the **Federal Rules of Civil Procedure** and the **Seventh Amendment** to the **United States Constitution** resulted in the abridging of Petitioner's rights and the violation of **28 U.S.C. 2072**, as well as due process guarantees under the **U.S. Constitution, 14th Amendment.**

2. **THE FIFTH CIRCUIT'S DECISION MUST BE OVERTURNED, IN THAT THE INHERENT AUTHORITY GRANTED TO THE TRIAL COURT TO MANAGE AND CONTROL ITS DOCKET, DOES NOT PERMIT THE DENIAL OF DUE PROCESS IN SO DOING, BUT RATHER MANDATES AN EQUAL PROTECTION OF THE LAWS AS IT PERTAINS TO A REDRESSING OF GRIEVANCES.**

Certainly a grant of authority to a trial court to manage and control its docket under the **Federal Rules of Civil Procedure** does not allow the prohibition of one party to obtain discovery of relevant information, until another party has complied with an order, albeit a void or voidable order. The Court prevented the Petitioner from engaging in meaningful discovery which was necessary to develop the facts and theories of her case.

The trial court and the Respondents prevented the Petitioner from discovering information relevant and pertinent to the development of facts and theories in this case through the trial court's denial of discoverable information and the Respondent's failure to disclose

information pursuant to the *Initial Disclosure* provisions of the **Federal Rules of Civil Procedure** 26(a).

Specifically, the trial court denied Petitioner's right to obtain any disclosures or discovery,(See June Simon Transcript pgs. 15-18, line 3; page 27 lines 5-9; page 24, lines 7-19) until Petitioner provided an expert report explaining the causal connection between Petitioner's medical condition and the drug (App. 4 and 5).

Empirical studies, drug interaction analyses, and New Drug Reports had been tendered to the Food & drug Administration as required by law for new drugs., and as evidenced by the information contained in Doc.# 11. Information showing the causal connection between the drug and Petitioner's injuries were in the hands of Respondents, but prohibited from discovery by the trial court. (See June Simon Transcript pgs. 15-18, line 3; page 27 lines 5-9; page 24, lines 7-19).

In the article, **Mandatory Disclosure and Equal Access to Justice; The 1993 Discovery Rules Amendments, and the Just, Speedy, and Inexpensive Determination of Every Action.** 67 Temple Law Review 179 (1994), author Virginia Hench states that in cases where the Defendant controls most of the information, such as in employment discrimination, civil rights and toxic tort cases, the burden on the Plaintiff should not be underestimated, as same will result in a "drastic curtailment of access to the courts for disadvantaged litigants".

The orders of the district court which refused Petitioner the right to obtain discovery and disclosure from Respondents, until Petitioner had produced an expert report, in contravention of the

Federal Rules of Civil Procedure 26(a) and 26(d), along with the Respondents failure and refusal to provide disclosures, produce any of the information requested by Petitioner, Respondent's refusal to provide meaningful disclosures and discovery, and the subsequent dismissal of Petitioner's cause constituted a denial of access to the courts and the denial of due process of law in contravention of the **United States Constitution, Amendment 1** which provides as follows:

> Congress shall make no law respecting an establishment of religion.....; or abridge.... the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.

Likewise the **Fourteenth Amendment of the United States Constitution** provides in pertinent part:

> .....No state shall make or enforce any law of the United States which shall abridge the privileges and immunities of the Citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

The Sixth Circuit, in **Swekel v. City of River Rouge**, 119 F.2d 1259 (C.A. Mich. 1997) holds that "it is beyond dispute that the right of access to the courts is a fundamental right protected by the

Constitution" as guaranteed by the 14th Amendment, Equal Protection Clause, First Amendment and Privileges and Immunities Clause of the United States Constitution , citing **Wolff v. McDonnell**, 418 U.S. 539, 579, 94 S. Ct. 2963, 2986 (1974) [14th Amendment]; **Pennsylvania v. Finley**, 481 U.S. 551,557, 107 S. Ct. 1990,1994 (1987)[Equal Protection]. Said case further indicates that any actions that effectively covers up evidence, such that it renders a party's state court action ineffective violates his rights to access to the courts. Id at 1262. Likewise, the Fifth Circuit held that the delay created by defendants could be a constitutional deprivation, if the conduct prejudiced the plaintiff's chance of recovery in **Ryland v. Shapiro**, 708 F.2d 967 (5th Cir. 1983). In the case at bar, that is exactly what occurred and the Fifth Circuit's decision in the case at bar conflicts with its own ruling in **Ryland**.

Moreover, the mandate that researchers for Respondents enter into an agreement in which information about the product Synarel, which is the object of this suit, could not be used in preparing an expert report for any person or party other than Respondents, constitutes a covering up of evidence, which effectively denied Petitioner equal access to the courts, due to the inability to discover that information

Consequently, the Fifth Circuit's ruling fundamentally misinterprets the trial court's grant of authority to manage and control its docket by dismissing Petitioner's claim for the failure to produce documents (an expert report) not in existence in response to a void or voidable order and not required to be produced, while at the same time allowing Respondents to disobey orders and fail to produce documents

in existence and required to be produced under **F.R.C.P.** 16, 26a, and 33.

3. **THE TRIAL COURT MAY NOT DISMISS A CASE FOR FAILURE TO COMPLY WITH AN ORDER WHEN A PARTY HAS SHOWN INABILITY TO COMPLY, RATHER THAN A FLAGRANT DISREGARD FOR THE ORDER.**

Petitioner attempted to make a good faith effort to comply with the court's orders. Petitioner noticed the court of the inability to obtain, an expert, as ordered, within the time frame designated by the court. The court decided that dismissal would be the appropriate remedy for refusal to comply, in contravention of **F.R.C.P.** 16(e) which provides an "order following a pretrial conference shall be modified to prevent manifest injustice"

It was manifest injustice to Petitioner to impose more stringent deadlines, than those agreed to by the parties and in contravention of **F.R.C.P.** 26 (2)(c). However, the Respondents never alleged or made a showing that manifest injustice would be imposed upon them due to delay in obtaining an expert report. In fact, the parties, agreed to a date of almost one year after the date deemed necessary by the court, in its Joint Meeting and Discovery Management Plan held prior to the first pretrial conference with the court. (See Doc. #7). Therefore, the court's ruling replaced the development of the parties case as they deemed proper in contravention of **F.R.C.P.** 29.

The trial court abused its discretion in mandating an order for an expert which was void, as a matter of law, could not be complied with by the very language contained therein (See Doc.# 12, Appendix

5, June Simon Tr., pg. 12, lines 9-19) in that showing a causal connection between something unreasonable and unanticipated is an oxymoron.

It is clear that the court substituted its judgment for the judgment of the litigants in this cause, which is not a part of the trial court's inherent authority as set forth above.

4. **THE FIFTH CIRCUIT INCORRECTLY INTERPRETED THE TRIAL COURT'S GRANT OF AUTHORITY TO ORDER DISMISSAL AS SANCTIONS FOR FAILURE TO OBEY AN ORDER, WHEN SUCH DISMISSAL RESULTS IN A DENIAL OF DUE PROCESS.**.

Petitioner has shown, as set forth above, that the court was without authority to enter the orders upon which the Petitioner's cause was dismissed. A proceeding which summarily dismisses a party's cause of action, be it a dismissal for sanctions, summary judgment, or any other form of dismissal which summarily adjudicates a case on the merits may result in a denial of due process.

The Appellate court for the 9th Circuit in Wanderer v. Johnston, 910 F.2d 652, 656 (C.A.9 (Cal) 1990) stated the following:

> We have found the element of prejudice to be essential, stating that sanctions which interfere with the litigants' claim or defenses violate due process when they are imposed "merely for an infraction that did not threaten to interfere with the rightful decision in the case" citing Wyle v. R.J. Reynolds

> **Industries, Inc.**, 709 F.2d 585, 591 (9th Cir. 1983). Delay alone, without focus on its effects, will not justify dismissal or default.

In the instant case, failure to produce the expert report would have only caused a delay in disclosing Petitioner's expert which is anticipated by **F.R.C.P.** 26(a)(2)(C), in that said report is expected 90 days prior to trial. Dismissal for failure to produce an expert report, not yet in existence interfered with a proper decision in the instant case.

The Supreme Court of the United States has recognized that the courts have the power to dismiss a case for disobedience of a discovery order in **National Hockey League v. Metropolitan Hockey Club, Inc.**. 427 U.S. 639, 640, 96 S. Ct. 2778, 2779 (1976), however, the court recognized that the decision of the trial court must be reversed, if the trial court abused its discretion in so dismissing a cause.

The Court in **National Hockey League** following its decision in **Societe Internationale v. Rogers**, 357 U.S. 197,212, 78 S. Ct. 1087,1096 (1958) stated:

> [That Rule 37] should not be construed to authorize dismissal of (a) complaint because of petitioner's noncompliance with a pretrial order when it has been established that failure to comply has been due to inability, and not to willfulness, bad faith, or any fault of petitioner.

Petitioner, clearly established to the lower court that she was unable to obtain the expert and expert report from an endocrinologist which conformed to the directive of the court, within the time frame directed by the court. Separate and apart from whether the court had the power to issue such an order (as set forth above), Petitioner, was unable to obtain the expert report as ordered. Moreover, **F.R.C.P.** 37 does not allow for the dismissal of a cause until a Motion to Compel has been requested. No such Motion had been requested by the Petitioner's in this cause.

The trial court clearly abused its discretion in granting a dismissal and denied the Petitioner due process and equal access to the courts as guaranteed by the United States Constitution.

Petitioner would further show that the grant of dismissal in a cause where the nonproduction of an expert report at the initial stages of the litigation, which did not adversely affect the Respondents, is wholly repugnant to the grant of a jury trial, as guaranteed by the **Seventh Amendment to the United States Constitution**, as well as the denial of due process under the **Fourteenth Amendment.**

5. **THE FIFTH CIRCUIT ERRED IN DETERMINING THAT DISMISSAL WAS WARRANTED DUE TO THE ALLEGED DISOBEDIENCE OF A COURT ORDER BY PETITIONER, WHILE FAILING TO REVIEW THE BIAS AND LACK OF IMPARTIALITY ON THE PART OF THE TRIAL JUDGE WHICH RESULTED IN A DENIAL OF DUE PROCESS AND LACK OF ACCESS TO THE COURTS TO REDRESS PETITIONER'S GRIEVANCES.**

The pretrial procedures were so fraught with prejudice from the trial court that Petitioner was unable to receive an impartial tribunal to redress her grievances as guaranteed by the United States Constitution.

Petitioner, in the trial court, sought a Motion for Recusal after a hearing on October 17, 1997. (See Doc. # 29) The trial court refused to recuse itself and denied Petitioner's Motion. (See Doc. # 32).

Petitioner sought the recusal of the trial judge due to 1) his entry of orders which were impossible to comply with; 2) his refusal to recognize the agreement of the parties; 3) his refusal to allow discovery to be had pursuant to the rules, in mandating that Petitioner obtain all her own medical records in duplication of the process already being used by Respondent to obtain them; 4) his refusal to allow Petitioner to obtain discovery and disclosure from Respondents until she produced an expert report, in contravention of the **Federal Rules of Civil Procedure** 26(a),(d) ; 5) and his characterizations of the case as one of extortion , among other comments (See Tr. Of June Simon- page 9, 15, 7-8, remainder of transcript in its entirety) and 6) because Petitioner was prohibited often from responding, explaining, or addressing issues of concern to the court.

Petitioner then sought Mandamus relief from the United States Court of Appeals, alleging among other things that the trial judge's refusal to recuse himself would result in "material and identifiable harm" to the Petitioner's case, and a sua sponte dismissal of the case, with said Writ of Mandamus being received by the trial court on the same date that it dismissed Petitioner's cause of action.

> A fair trial before a fair and impartial tribunal, whether a court or administrative agency , is a basic requirement of due process. "Not only is a biased decision maker ***constitutionally unacceptable***, but our system of law has always endeavored to prevent even the probability of unfairness'". **Baran v. Port of Beaumont Nav. Dist. of Jefferson County, Tex.**, 57 F.3d 436 (C.A.5 (Tex) 1995).
>
> [Emphasis added]

The Supreme Court in **Marshall v. Jerrico, Inc.**, 446 U.S. 238,240, 100 S.Ct. 1610, 1612 (1980) stated that "The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." The court expounded that neutrality is central to due process concerns in order to prevent "unjustified and mistaken deprivations" and to promote participation and dialogue by "affected individuals in the decision making process."

"The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law." Id at 1613.

The Court in **Marshall** relied on **Offutt v. United States**, 349 U.S. 11, 75 S.Ct.11 (1954), a case in which the appellant and the trial judge engaged in verbal combat. The court reviewed the actions of the judge and noted an "infusion of personal animosity". The Court

determined, in this contempt case. "Justice must satisfy the appearance of justice", therefore, the judge should have appointed another judge to hear the contempt matter, following the reasoning in **Cooke v. United States**, 267 U.S. 517,342, 45 S.Ct. 390,394 (1925).

The failure of the trial judge to remove himself from this cause constituted a denial of due process to Petitioner.

6. **FINALLY, THE APPELLATE COURT ERRED IN FAILING TO ADDRESS PETITIONER'S ISSUE REGARDING THE TAXING OF COSTS FOR THE OBTAINING OF MEDICAL RECORDS OF PETITIONER VIA DEPOSITION ON WRITTEN QUESTIONS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 31.**

The record is wholly silent from the Fifth Circuit in this regard.

Respondents presented a Bill of Costs in the amount of $6029.35, seeking to tax all costs of discovery of Petitioner's medical records against Petitioner. (See Docket Sheet Entry #45). The Court granted same. (Doc.# 45 Petitioner objected.

28 U.S.C. § 1920 provides that a judge or clerk of any court of the Unites States may tax as costs the following:

(1) Fees for the clerk and marshal;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Docket fees under section 1923 of this title

(5) Compensation of court appointed experts.....

Petitioner would show that all costs incurred by Respondents were investigative costs in obtaining Petitioner's medical records. Most of the records were obtained through Depositions on Written Questions. Moreover, the Respondents exceeded the number of Depositions allowed by law pursuant (10) to the **F.R.C.P.** (a)(2)(A), therefore the trial court abused its discretion in mandating that Petitioner pay them.

The Court in **Echostar Satellite Corp. v. Advance Communications Corp.**, at 902 F.Supp. 273 (D.Colo. 1995) has held that costs of depositions taken for discovery and investigative purposes were properly disallowed. The Courts have further held in other districts that depositions may not be taken purely for the convenience of attorney or be investigative in nature, and be taxable as costs. **NLFC, Inc. v. Devcom MidAmerica, Inc.**, 916 F.Supp. 751 (N.D.Ill 1996). The court in **Todd Shipyard's Corp. V. Turbine Service, Inc.**, 592 F.Supp. 380 (D.C.La 1984) held that depositions taken solely for discovery purposes were not taxable costs.

Given, the foregoing, Petitioner would show that the Court abused its discretion in taxing the costs of discovery of Petitioner's medical records against Petitioner. Petitioner properly filed a contest to same (Doc.# 41) stating in addition to the foregoing that Appellee sought records which were irrelevant and , records which had already been produced, thereby inflating the costs.

Moreover, when Respondents sought costs for production of these records, during a hearing in which Petitioner was not present, the Court denied them. (See Ann Traylor transcript pg. 6, lines 12-19).

Given, the foregoing, the Court abused its discretion in taxing

costs of discovery against Petitioner.

CONCLUSION

There is no basis for allowing the trial court to use its inherent powers to dismiss a cause in order to control or manage its docket or when it encounters a litigant whom it deems unpalatable. To deny a redress of grievances through the courts to any individual with whom the court disagrees erodes the very Constitution of this country. The decision of the trial and appellate court so squarely collides with this Court's decisions, as well as those of other circuits, that review should be granted, with summary reversal for an appropriate decision.

Beyond the federal questions raised by this litigation, this case raises important implications of public interest for anyone who has taken the drug, Synarel, which is the object of this suit. Dismissal and failure to disclose pertinent information under the guise of discovery can not be afforded deference at the expense of every other individual who is not aware the latent or patent effects of this drug, due to the manufacturer's failure to properly notice the public.

Respectfully submitted,

Veronica L. Davis
Petitioner Pro Se
222 N. Mattson
West Columbia, Texas 77486
(409) 345-2953
(409) 345-5461 Telecopier

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7.	Docket Sheet of the trial court	

APPENDIX 1

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO.98-20046

VERONICA L. DAVIS Filed August 10,1998

Plaintiff-Appellant

v.

SYNTEX LABORATORIES, INC.; ROCHE BIOMEDICAL LABORATORIES, Inc.

Defendants-Appellees

Appeal from the United States District Court for the Southern District of Texas, Houston

ON PETITION FOR REHEARING

Before POLITZ, Chief Judge, WEINER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM

IT IS ORDERED that the petition for rehearing filed in the above case is denied.

ENTERED FOR THE COURT:

/S/ Henry A. Politz

United States Circuit Judge

APPENDIX 2

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

FILED JUL 08,1998

No. 98-20046

Summary Calendar

VERONICA L. DAVIS Plaintiff-Appellant

versus

SYNTEX LABORATORIES, INC.;

ROCHE BIOMEDICAL LABORA-

TORIES, INC., Defendants-Appellees

Appeal from the United States Court

For the Southern District of Texas

H-97-CV-177

Bwfore POLITZ, Chief Judge, WEINER AND EMILIO M. GARZA, Circuit Judges.

PER CURIAM*

*Pursuant to the 5th CIR. R 47.5, the court has determined that this opinion should not be published and is not precedent under the limited circumstances set forth in the 5th CIR R.47.5.4.

Veronica Davis, an attorney, acting *pro se*, appeals the district courts's dismissal of her complaint, with prejudice. For reasons assigned, we affirm.

Background

In this diversity action. Davis alleges that she was injured by a d drug manufactured by the defendant At the first status conference, the district court ordered Davis to produce her medical records and to provide reports from expert establishing the causal link between the drug and her condition. In a similar case involving Davis, we detailed the "long and tortured course" of the litigation prior to affirming the district court.[1] We are unwilling to similarly recount the facts in this case. We have, however, fully reviewed the record and the briefs. Suffice to say, that the record establishes Davis' failure to comply with court orders, failure to attend scheduled status conferences, and a warning by the court that further failure to comply with its orders would result in dismissal. Davis thereafter failed to attend a hearing scheduled at her request and the court dismissed her case with prejudice, ultimately awarding the defendant $6029.35 in costs. Davis appeals, contending *inter alia*, that the district court abused its discretion in ordering the dismissal.

Analysis

---

[1]**Woodson v. Surgitek.**, 57 F.3d 1406, 1407-1416 (1995).

Our trial courts are vested with the inherent power to manage their dockets in order to dispose of cases in an efficiently and orderly manner.[2] This authority necessarily includes the power to dismiss a case as a sanction for a party's failure to obey court orders.[3] Although we recognize that dismissal is a harsh sanction, we will uphold an involuntary dismissal, with prejudice, unless the district court abused its discretion. In this instance, it is beyond peradventure that Davis willfully abused the judicial process and we believe that the court acted well within its discretion and showed considerable restraint in handling this matter. For the foregoing reasons, the judgment of the district court is AFFIRMED.

---

[2]**Link v. Wabash R. Co.**, 370 U.S. 626 (1962).

[3]**Woodson** at 417

APPENDIX 3

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

VERONICA L. DAVIS	§	
Plaintiff	§	
	§	
	§	CIVIL ACTION NO.
versus	§	H-97-177
	§	
SYNTEX LABORATORIES INC.	§	December 8, 1997

Order of Dismissal

On Syntex's motion, this case is dismissed with prejudice. (28#)

Signed December 5, 1997, at Houston, Texas.

/s/ Lynn Hughes

United States District Judge

#37 Filed Dec. 8, 1997

APPENDIX 4

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

Filed Jun 13, 1997

DAVIS § H-97-177

verus

SYNTEX

CONFERENCE MEMORANDUM

Appearances

Counsel:	Representing:
Veronica Davis	Plaintiff
Richard Josephson	Defendant

6-9-97

At the conference, these rulings were made:

Davis must produce all her medical records and provide reports from the doctors that can explain the causal link between the drug and her condition by June 30, 1997.

Doc# 8

APPENDIX 5

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

Filed Sep 8, 1997

DAVIS	§	H-97-177
verus	§	
SYNTEX	§	

CONFERENCE MEMORANDUM

Appearances

Counsel:	Representing:
Veronica Davis	Plaintiff
Richard Josephson	Defendant
Mark L. Walters	

9-8-97

At the conference, these rulings were made:

(1) Davis will deliver all her medical records to Syntex by noon Wednesday, 9-17 or her case will be dismissed as she has refused to produce them neither did she return Syntex'a authorization.

(2) An endocrinologist who has seen Davis's medical records will deliver to Syntex a "Daubert" report with an admiss[a]ble opinion by 10.31.97 connecting Davis's problems to unreasonable & unanticipated harm to her pituitary.

#12 4:97cv00177 #12 Pg.

APPENDIX 6

[Letterhead names omitted in printing]

Baker & Botts
Richard L. Josephson
3000 One Shell Plaza
910 Louisiana
Houston, Texas 77002

June 24, 1997

Via U.S. Mail and Facsimile Transmission

Re: **H-97-177; Veronica L. Davis vs. Syntex Laboratories, Inc. & Roche Biosciences**

Dear Mr. Josephson,

This is to confirm our conversation on June 09, 1997 in the Federal Court building lobby regarding the production of Plaintiff's expert reports and the production of medical information.

You indicated that the submission of an expert report some time prior to the September 08, 1997 would be sufficient, due to the vacation schedules of all persons involved, including the Honorable Lynn Hughes. I indicated that I would make every effort to meet with the Court's date of June 30, 1997. Even though every effort is being made to comply with the date of June 30, 1997, that the places an onerous burden on me and my experts. As previously discussed, I am awaiting some information from the Food & Drug Administration. Rushing the report may result in amendments and revisions. In order to avoid that, may we agree to the date of

August 30,1997. Same is acceptable to you, please find an agreed order attached to a Motion to Extend Time to Designate Experts attached for your review and signature.

Additionally, you stated there was no need to obtain medical records from all sources as directed by the Judge Hughes, as an executed medical authorization would prove sufficient. I have obtained a number of records already, at his direction, and will be forwarding same to you in response to your discovery requests. However, I will execute a medical authorization for other relevant.

A review of your Initial Disclosure reveals a failure of the Defendant to disclose individuals with relevant information. Clearly, the purpose of said is to reveal to the Plaintiff, the names of persons known to the Defendant, employed by the Defendant, or who will be called by the Defendant regarding matters relevant to the case. A simple regurgitation of the Plaintiff's list of potential witnesses violates the spirit of the rule. I would appreciate your immediate responsiveness to this matter, by providing the appropriate disclosures as required by Federal Rule 26

Please note that I have changed telephone numbers. All previous correspondence has these numbers reversed. There was an incorrect telephone switching designation of some sort.

Office telephone:	(409) 345-2953
Facsimile transmission:	(409) 345-5461

The number listed on the stationary is no longer a valid line.

Thank you in advance for your consideration in these matters.

Sincerely,

Veronica L. Davis

U. S .District Court

TXS-Southern District of Texas (Houston)

CIVIL DOCKET FOR CASE #:97-cv-177

CLOSED APPEAL

Davis v. Syntex Laboratories, et al — Filed:01/21/97

Assigned to: Judge Lynn N. Hughes — Jury Demand:Defendant

Demand: $50,000 — Nature of Suit: 365

Dkt# in other court: None — Jurisdiction: Diversity

Cause: 28:1332 Diversity-Product Liability

VERONICA L. DAVIS
plaintiff

Veronica L. Davos
409-345-5461 fax
[COR LD NTC]
Attorney at Law
West Columbia, TX 77486
409-345-2953

v.

SYNTEX LABORATORIES, INC.
defendant

Richard L. Jospehson
713-229-1522
[COR LD NTC]
Baker & Botts
910 Louisiana
Ste 3000
Houston, TX77002-9934

ROCHE BIOMEDICAL LABORATORIES, INC.
defendant

Richard L. Jospehson
(See above)
[COR LD NTC]

Docket as of March 5, 1998 9:55 a.m Page 1 Non-Public

CLOSED APPEAL

INTERNAL USE ONLY: Proceedings include all events.
4:97cv177 Davis v. Syntex Laboratories, et al

VERONICA L. DAVIS
plaintiff

v.

SYNTEX LABORATORIES INC.; ROCHE BIOMEDICAL LABORATORIES, INC.
Defendant

Docket as of March 5, 1998 9:55a.m. Page 2 NON-PUBLIC

§

CLOSED APPEAL
INTERNAL USE ONLY: Proceedings include all events.
4:97cv177 Davis v. Syntex Laboratories, et al

1/21/97	1	COMPLAINT filed; FILING FEE $150.00 RECEIPT # 463998 (BKJ) [Entry date 01/22/97]
1/21/97	2	ORDER for Conf set initial pretrial and scheduling conference for 1:30 6/9/97 before Judge Lynn Hughes, entered; Parties notified.(bj) [Entry date 01/22/97]
1/21/97	--	**Added for Veronica L Davis attorney Veronica L Davis (bj) [Entry date 01/22/97]
2/20/97	3	Pltf's AMENDED COMPLAINT by Veronica L Davis, amending 1-1 complaint filed.(fs) [Entry date 02/24/97]

3/7/97	4	ANSWER to Complaint by Syntex Laboratories, Roche Biomedical (Added attorney Richard L. Josephson), filed. (hl) [Entry date 03/10/97]
3/11/97	5	DEMAND for jury trial by Syntex Laboratories, filed (hl); [Entry date 03/12/97]
5/23/97	6	REQUIRED DISCLOSURE Pursuant Rule 26, filed (ks) [Entry date 05/27/97]
6/2/97	7	Report of Meeting and Joint Discovery/Case Management Plan by Veronica L Davis, Syntex Laboratories, filed (hl) [Entry date 06/03/97]
6/9/97	8	CONFERENCE MEMORANDUM entered; terminated deadline; Appearances: Veronica Davis f/pltf; Richard Josephson f/deft; pltf must produce medical records and provide the reports from doctors that can explain causal link between the drug and her condition by 6/30/97; SETTING pretrial conference for 11:30 9/8/97 before Judge Lynn N. Hughes. Parties ntfd. (signed by Judge Lynn N. Hughes) (nd) [Entry date 06/13/97]
6/25/97	9	MOTION to extend time to file expert report by Veronica L Davis, Motion Docket Date 7/15/97 [9-1] motion filed (hl) [Entry date 06/26/97]
6/27/97	10	ORDER entered GRANTING pltf's [9-1] motion to extend time to file expert report; SETTING pltf's expert report due 9/5/97; Parties notified (signed by Judge Lynn N. Hughes) (nd) [Entry date 06/30/97]
6/27/97	__	RESPONSE by Veronica L Davis to [10-2] order to produce reports from doctors, filed (lb) [Entry date 9/8/97]

9/5/97	11	RESPONSE by Veronica L Davis to [10-2] order to produce reports from doctors, filed. (Lb) [Entry date 09/08/97]
9/5/97	--	**Terminated deadlines (lb) [Entry date 09/08/97]
9/8/97	12	CONFERENCE MEMORANDUM held; App: Davis, Josephson and Walters; terminated deadlines, set pretrial conference for 3:30 11/10/97, Davis will deliver all her medical records to Syntex by 9/17/97...,entered. Parties ntfd. (Signed by Lynn N. Hughes) (hl)
9/10/97	13	MOTION to compel, and for sanctions by Veronica L Davis, Motion Docket Date 9/30/97 [13-1] motion, 9/30/97 [13-2] motion, filed. (Hl) [Entry date 09/11/97]
09/12/97	14	MOTION for hearing on Ct.'s Order by Veronica L. Davis, Motion Docket Date 10/2/97 [14-1] Motion for hearing on Ct's order, [13-1] motion to compel, and for [13-2] motion for sanctions, entered; {Parties notified. (Signed by Judge Lynn Hughes) (hl)
09/12/97	15	MOTION for protective order by Veronica L Davis, Motion Docket Date 10/2/97 [15-1], filed (h
09/29/97	16	ORDER Motion hearing set for 9:30 10/9/97 for [15-1} motion for protective order [14-1] motion for hearing on Ct's order, [13-1] motion to compel, and for [13-2] motion for sanctions entered. Parties notified. Signed by Lynn N. Hughes) (hl)
10/2/97	17	RESPONSE by Syntex Laboratories, Roche Biomedical to [13-1] motion to comple,[13-2] motion for sanctions, filed (hl) [Entry date

10/03/97]

10/2/97 18 RESPONSE by Syntex Laboratories, Roche Biomedical to [15-1- motion for protective order, filed (hl) [Entry date 10/3/97]

10/2/97 19 RESPONSE by Syntex Laboratories, Roche Biomedical to [14-1] motion for hearing on Ct's order, filed [Entry 10/03/97]

10/2/97 20 ORDER Motion hearing set for 11:00 10/17/97 for [15-1] motion for protective order, [14-1] motion for hearing on Ct's order, [13-1} motion to compel and for [13-2} motion for sanctions, entered; Parties notified (signed by Judge Lynn N. Hughes) (hl) [Entry date 10/03/97]

10/17/97 21 AMENDED MOTION for protective order by Veronica L Davis, Motion Docekt Date 11/6/97, filed (hl)

10/17/97 22 MOTION to quash deposition by written questions by Veronica L. Davis, Motion Docekt Date 11/6/97 [22-1] motion, filed. (hl)

10/17/97 23 AMENDED MOTION for hearing on Ct's Order motion to vacate the Ct's order by Veronica L Davis, Motion Docket Date 11/6/97 [23-1] motion, filed (hl)

10/17/97 25 Minute entry; motion hearing held before Judge Lynn N Hughes on 10/17/97, terminated deadlines. Apps: Davis pro se, Walters f/deft. Davis' [13-11 motion to compel production from Syntex is quashed; Davis' [22-1] motion to quash deposition by written questions {15-1] motion for protective

order and [12-l} amended motion for protective order are denied: All motions not expressly decided are denied without prejudice:-denying Davis' [13-2] motion for sanctions, [14-1] motion for hearing on Ct's Order and [23-11 amended motion for hearing on Ct's Order. The deadline for 10/31/97 for the production of expert reports subsists. Syntex must produce a copy of its medical reports, Davis must furnish a list of every health care provider she has seen by noon 10/21/97. Syntex will send questions about Davis, coverage. Davis' oral motion to recuse is denied. If Davis does not comply with Court's .orders, this case will be dismissed without prejudice, A pretrial conference is set for 4:00 11/10/97. Ct Reporter: June Simon (lt)

10/23/97 24 ORDER set pretrial conference for 4:00 11/10/97 for 4:00 11/10/97 entered; Parties notified (signed by Judge Lynn N. Hughes) (hl)

10/23/97 26 RESPONSE by Veronica L. Davis to [12-4] order to provide the name of medical providers, filed (hl)

10/31/97 27 MOTION for reconsideration, or to vacate [12-4] order by Veronica L Davis, Motion Docket Date 11.20.97 [27-1] motion, 11/20/97[27-2] motion, filed (ps) [Entry date 11/03/97]

11/4/97 28 MOTION to dismiss by Syntex Laboratories, Motion Docket Date 11/24/97 [28-1] motion, filed.

11/5/97 29 MOTION to disqualify judge by Veronica L Davis, Motion Docket Date 11/25/97 [29-1] motion, filed

11/7/97 30 ORDER Motion hearing for 3:30 12/4/97 for 3:30 12/4/97 for [29-1] motion to disqualify judge, set for 3:30 12/4/97 for [28-1] motion to dismiss set

for 3:30 12/4/97 for [27-1] motion for reconsideration, set for 3:30 12/4/97 for [27-2] motion to vacate order [12-4] order, entered; Parties notified. (Signed by Judge Lynn N. Hughes)

11/7/97 31 Notice of Non-Attendance for Pre-trial Conference by Veronica L. Davis, filed (ps) [Entry date 11/10]

11/10/97 33 Minute entry; HEARING held on 11/10/97. Apps.: No appearance for Davis; Mark Walters f/defts. Order to be entered. Motion to recused and Davis' absence discussed. terminated deadlines Ct. Reporter: G Dye (ps) [Entry date 11/14/97]

11/13/97 32 ORDER Davis's motion to recuse is denied, entered; Parties notified. (Signed by Judge Lynn N. Hughes) (hl)

11/18/97 34 TRANSCRIPT OF PROCEEDINGS for dates of Oct. 17,1997 at 11 am before Judge Lynn Hughes filed. (Ct.Reporter: J. Simon) (ps)

11/25/97 35 RESPONSE BY Syntex Laboratories to pltf's [27-1] motion for reconsideration, filed. (Lt)

12/4/97 – **Reset document number to 35 (ps)

12/4/97 36 Minute entry; Hrg. Held; Apps: Walters. Argument heard on Davis's motion fr0[sic] reconsideration #27; Syntex's motion to dismiss #28; Davis motion to Disqualify judge. Order to be entered. Ruling orally rendered on Veronica Davis did not apear. 2) Syntex may submit a bill of costs promptly. terminated deadlines Ct. Reporter: Traylor (hl) [Entry date 12/05/97]

12/5/97	37	ORDER OF DISMISSAL granting Syntex's [28-1] motion to dismiss, enered; Parties notified. (Signed by Judge Lynn N. Hughes) (hl) [Entry date 12/08/97]
12/5/97	--	case closed (hl) [Entry date 12/08/97] [Edit date 01/13/98]
12/12/97	38	MOTION for taxation of Ct. Costs by Syntex Laboratories, Roche Biomedical, Motion Docket Date 1/1/98 [38-1] motion, filed (hl) [Entry date 12/08/97]
12/16/97	39	USCA ORDER denying [0-0] case the petition for writ of mandamus , filed (kh)
12/30/97	40	REQUEST by Veronica L. Davis for transcript of proceedings, filed (lb)
12/30/97	41	Contest by Veronica L. Davis of defendant's [38-1] motion for taxation of Ct. Costs, filed (lb)
12/30/97	42	Transcript request Rehearing Mtn for Dismissal on 12/4/97 before Judge Hughes by Ct. Reporter: Ann Traylor, filed (hl) [Entry date 01/05/98]
12/30/97	43	NOTICE OF APPEAL of 37-1 order by Veronica L. Davis, filed. Fee Status: PAID Receipt #: 474027 (kh) [Entry date 01/16/98]
1/6/98	--	Notice of appeal and certified copy of docket transmitted to USCA: [43-1] appeal (kh)
1/7/98	44	RESPONSE by Syntex Laboratories, Roche Biomedical to [38-1] motion for taxation fo Ct. Costs, filed (hl)

1/14/98	45	ORDER granting [38-1] motion for taxation of Ct. Costs, Veronica L. Davis will pay $6029.35 to Syntex (U.S.A.) Inc. for its discovery costs. Entered; Parties notified (signed by Judge Lynn N. Hughes) (hl) [Entry date 01/15/98]
01/23/98	--	Filing Fee Paid $150.00 RECEIPT # 474800 (bj) [Entry date of 01/29/98]
01/27/98	46	TRANSCRIPT OF PROCEEDINGS of pretrial conference for dates of 11/10/97 before Judge Lynn N. Hughes, filed. (Court Rptr; Gayle L. Dye)
2/2/98	47	TRANSCRIPT OF PROCEEDINGS of Hrg. For dates of 12/4/97 before Judge Hughes., filed. (Court Rptr: A. Traylor) Loose in file (hl) [Entry date 02/03/98]
2/3/98	--	NOTICE of Docketing NOA from USCA Re: [43-1] appeal USCA NUMBER: 98-20046 (kh) [Entry date 02/04/98
3/5/98	--	Certificate of Readiness issued to 5th Circuit Court of Appeals. USCA Number 98-20046. Parties ntfd. (kh)